

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-302

In re Applications of

JOHN M. GIANNETTINO File No. BPH-910719MA  
(hereafter "Giannettino")

JOHN T. PRITCHARD File No. BPH-910722MI  
(hereafter "Pritchard")

For Construction Permit  
for a New FM Station on Channel 276C3  
in Burlington, Iowa

HEARING DESIGNATION ORDER

Adopted: December 8, 1992; Released: December 23, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Informal Objection.* On December 6, 1991, Talley Broadcasting Company ("TBC"), licensee of radio stations KBKB and KBKB-FM, Fort Madison, Iowa, filed an informal objection against the Pritchard application. The basis for the objection is TBC's "concern about the proximity of the tower site proposed in the Pritchard application to the tower site of KBKB-FM, the potential for interference to the radio air navigation localizer at the municipal airport and the potential for receiver induced intermodulation interference [to KBKB-FM]." In support of its objection, however, TBC refers to the FAA's "determination of no hazard" to the construction of the proposed tower. Therein, the FAA specified a condition which delineated the steps to be taken by Pritchard in the event of any harmful interference to FAA facilities due to his operation. Moreover, in his "Engineering Statement" Pritchard states that "if instances of objectionable interference to any station, broadcast or non-broadcast, due to the proposed facility should arise, the applicant will cooperate fully, as appropriate, to eliminate the interference." Therefore, based on the foregoing, we find TBC's "concerns" baseless and that grant of Pritchard's application would be consistent with the public interest. Accordingly, the TBC informal objection will be denied.

3. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Giannettino and Pritchard did not address the matter of how they would protect workers on their tower from RF radiation exposure. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Giannettino and Pritchard may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg.

14999 (April 12, 1986). See also *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Giannettino and Pritchard failed to indicate how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. Accordingly, Giannettino and Pritchard will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. See 47 C.F.R. § 1.1308(d).

4. *Divestiture.* John T. Pritchard is a principal of KKMI (FM), Burlington, Iowa. John T. Pritchard has indicated his intent to terminate his relationship with KKMI (FM) in the event of grant of the referenced application. Accordingly, in the event of grant of Pritchard's application, John T. Pritchard will be required to sever all connection with KKMI (FM) prior to the commencement of program test authority.

5. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Giannettino or Pritchard in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1.1319.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the TBC informal objection IS HEREBY DENIED.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 3 hereinabove, Giannettino and Pritchard shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That in the event of grant of Pritchard's application, John T. Pritchard will be ordered to divest Station KKMI (FM) prior to the commencement of program test authority.

11. IT IS FURTHER ORDERED, That in the event of grant of Pritchard's application, the construction permit (BPH-910722MI) shall contain the following FAA condition, referenced in Paragraph 2 above:

FAA INTERFERENCE CONDITION-- Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the permittee's transmitter, the permittee shall immediately reduce power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one (1) year of interference-free operation.

12. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be (addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to

present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau